

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

GABINO RAMOS HERNANDEZ

PLAINTIFF

v.

CIVIL ACTION NO. 2:17-cv-123-TBM-MTP

**PHILLIP CAUSEY *and* THE
UNITED STATES OF AMERICA**

DEFENDANTS

ORDER

This matter came before the Court on Defendant Phillip Causey’s Motion to Dismiss [138]. At the hearing conducted on July 12, 2023, the Court, having considered the pleadings, the record, the oral arguments of counsel, and the relevant legal authority, announced on the record its detailed findings and conclusions.

Below is a brief summary of the Court’s reasoning. It does not include the full and particularized findings and conclusions articulated from the bench.

The Court found that Causey’s Motion to Dismiss [138] should be granted in part and denied in part. To begin, Hernandez conceded that all state law claims against Causey should be dismissed, and the Court granted Causey’s Motion on this ground. The Court also found that to the extent Hernandez has alleged a Section 1983 claim against Causey based on his actions as a federal agent acting under color of federal law, such a claim must be dismissed. *Cantu v. Moody*, 933 F.3d 414, 419 (5th Cir. 2019) (finding that federal agents “acting under color of federal law” are not liable under 42 U.S.C. § 1983); *Rodriguez v. Handy*, 873 F.2d 814, 817 n.3 (5th Cir. 1989).


The Court also considered the Section 1983 claim that Causey acted under color of state law. Rather than dismiss dismissing this Section 1983 claim that Causey acted under color of state

law, however, the Court gave Hernandez the opportunity to file a motion to amend his complaint.¹ In allowing Hernandez to file a motion to amend his complaint, the Court considered a number of factors—including that the case has been stayed by agreement of the parties because of Causey’s military deployment, there is no trial date or current scheduling order, the Defendants’ belief that this matter may be stayed through November 2024 due to Causey’s military deployment, and other reasons as articulated at the hearing. Hernandez was cautioned that the proposed amended complaint must only address Causey’s actions under color of state law, so that the Court may fully consider whether such an amendment is warranted.

IT IS THEREFORE ORDERED AND ADJUDGED that Phillip Causey’s Motion to Dismiss [138] is GRANTED IN PART and DENIED IN PART. Hernandez’ 42 U.S.C. § 1983 claim against Causey based on his actions as a federal agent acting under color of federal law is DISMISSED WITH PREJUDICE. Hernandez’ state law claims asserted against Causey are DISMISSED WITH PREJUDICE. Causey’s Motion is denied WITHOUT PREJUDICE as to all other forms of relief.

IT IS FURTHER ORDERED AND ADJUDGED that Hernandez has until August 2, 2023, to file a motion to amend his complaint as to any 42 U.S.C. § 1983 claim against Causey related to whether Causey acted under color of state law. Hernandez must attach any proposed amended complaint to his motion to amend.

This, the 13th day of July, 2023.


TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE

¹ While Hernandez did not file a separate motion for leave to file an amended complaint, such relief was requested as an alternative ground to dismissal in his Response to the Motion to Dismiss pursuant to Federal Rule of Civil Procedure 15. Notably, in the briefing Causey did not address Hernandez’ alternative request to amend his complaint, including any futility or undue prejudice argument.